

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

DON BARTHELME,)
)
Plaintiff,)
)
vs.) Case No. CIV-17-962-M
)
SUNTRUST MORTGAGE, INC.;)
SETERUS, INC.; FEDERAL NATIONAL)
MORTGAGE ASSOCIATION; FANNIE)
MAE REMIC TRUST 2004-21;)
DOES 1 through 10 inclusive,)
)
Defendants.)

ORDER

Before the Court is plaintiff's Motion for Leave to File Amended Complaint, filed November 13, 2017. On November 28, 2017, defendants Seterus, Inc., Fannie Mae REMIC Trust 2004-21, and Federal National Mortgage Association ("Defendants") filed their response. Based upon the parties' submissions, the Court makes its determination.

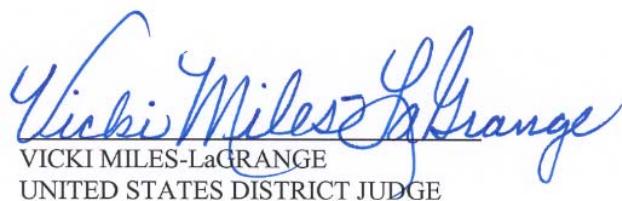
Pursuant to Federal Rule of Civil Procedure 15(a)(2), plaintiff moves this Court for leave to file an amended complaint. Specifically, plaintiff requests leave to file an amended complaint to address and cure the pleading deficiencies and to clarify issues outlined in defendants' motions to dismiss. Defendants object to plaintiff's motion. Specifically, Defendants assert that plaintiff's proposed amended complaint contains the same deficiencies as plaintiff's original complaint and, thus, plaintiff's proposed amendment is futile.

Federal Rule of Civil Procedure 15(a)(2) provides, in pertinent part, that "a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). Whether to grant leave to amend is within the trial court's discretion. *Woolsey v. Marion Labs., Inc.*, 934 F.2d 1452,

1462 (10th Cir. 1991). “Refusing leave to amend is generally only justified upon a showing of undue delay, undue prejudice to the opposing party, bad faith or dilatory motive, failure to cure deficiencies by amendments previously allowed, or futility of amendment.” *Frank v. U.S. West, Inc.*, 3 F.3d 1357, 1365 (10th Cir. 1993). “A proposed amendment is futile if the complaint, as amended, would be subject to dismissal.” *Anderson v. Merrill Lynch Pierce Fenner & Smith, Inc.*, 521 F.3d 1278, 1288 (10th Cir. 2008) (internal quotations omitted).

Having carefully reviewed the parties’ submissions, and particularly plaintiff’s proposed amended complaint, the Court finds that plaintiff should be granted leave to file an amended complaint. Specifically, the Court finds defendants have not sufficiently shown that the proposed amendment would clearly be futile. Accordingly, the Court GRANTS plaintiff’s Motion for Leave to File Amended Complaint [docket no. 16]. The Court hereby DIRECTS the Court Clerk to file plaintiff’s proposed amended complaint [docket no. 16-1], attached to plaintiff’s Motion for Leave to File Amended Complaint and Brief in Support.

IT IS SO ORDERED this 15th day of December, 2017.



VICKI MILES-LAGRANGE
UNITED STATES DISTRICT JUDGE